Supreme Court, U.S.
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No. 00-348

IN THE

Supreme Court of the United States

ADVANCE LEASING AND DEVELOPMENT, INC., *et al.*,

Petitioners,

v.

CHRIS HART, *etc., et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT SEIBERT

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QUESTIONS PRESENTED

I. Whether This Court Has Jurisdiction Of This Case.

II. Whether The Judgment Of The Court Of Appeals Is Inconsistent With Any Decision Of This Court.

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STATEMENT OF THE CASE

The events material to this proceeding date from December 16, 1993 when the Governor and Cabinet, sitting as the Administration Commission, approved the designation of petitioners' land as Urban Mixed Use. The issue here is the effect of the later redesignation of petitioners' land as Community Mixed Use which the Department of Community Affairs approved.[1] Although either designation would have allowed a shopping mall, under the Community Mixed Use designation the development would not be allowed if it exceeded 650,000 square feet. The petitioners alleged below that the redesignation worked a taking compensable under the Just Compensation Clause of the Fifth Amendment and an arbitrary deprivation of property in violation of the Due Process Clause of the Fourteenth Amendment. The United States District Court ruled that it did not, and the United States Court of Appeals affirmed.

While this case was pending in the District Court, petitioners initiated a quasi-judicial administrative proceeding with the Department to contest the redesignation of the petitioners' land to Community Mixed Use. The resolution of that question turned upon the effect of the earlier Final Order of the Administration Commission calling for the Urban Mixed Use designation. In the administrative proceeding the petitioners contended *inter alia* that the Final Order controlled the designation of the mall site notwithstanding the lapse of time and the consequent need

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1. In this Brief, the Florida Department of Community Affairs is called "the Department" and the Secretary of the Department, who is sued in his official capacity, is referred to as "the Secretary." As in the Petition, the Final Order rendered by the Administration Commission on December 16, 1993 is called the "Final Order."

to reconsider existing land planning designations in light of new demographic information. In its own Final Order upholding the redesignation of petitioners' land as Community Mixed Use, the Department addressed the effect of the earlier Final Order. Appendix at 20-24. The Department rejected petitioners' argument with the observation that "the Administration Commission determined that the subject plan amendments [from Urban Mixed Use to Community Mixed Use] are consistent with its December 16, 1993 Final Order. The Administration Commission is in the best position to interpret its own order." Appendix at 23-24. Based on this and other determinations, the Department entered a Final Order on January 12, 1999 upholding the redesignation of the petitioners' land to Community Mixed Use.

Petitioners appealed the Final Order of the Department to the District Court of Appeal of Florida, and the District Court of Appeal affirmed the Final Order without opinion. *Geraci v. Department of Community Affairs*, 754 So. 2d 35 (Fla. Dist. Ct. App. 1999) (*per curiam*). No petition to review this judgment was taken to the Supreme Court of Florida.

REASONS FOR DENYING THE WRIT

The issues petitioners raised before the Department in the administrative proceeding were addressed in the Final Order of the Department. When the District Court of Appeal of Florida affirmed the Final Order, the resolution of those issues by the Department merged into the judgment of affirmance, and the petitioners did not take any proceeding to review that judgment in the Supreme Court of Florida. That judgment is now final, and is binding on the parties and those in privity with them. In any event, the effect of the

earlier Final Order from the Administration Commission was an issue of state law, not federal law. Last, nothing in the judgment of the United States Court of Appeals conflicts with the recent decision of this Court relied on by petitioners.

I. THIS COURT HAS NO JURISDICTION OF THIS CASE.

Petitioners concede that their case as applied to the Secretary rests solely on the enforceability of the Final Order by the Administration Commission. Petition at 8 n.4. Petitioners' argument is fatal to the jurisdiction of this Court as applied to the Secretary for at least three reasons. First, the legal effect of the Final Order was determined when the District Court of Appeal of Florida affirmed the Final Order of the Department, and the petitioners failed to petition the Supreme Court of Florida to review that judgment. Second, even if petitioners had undertaken further proceedings to contest the judgment of the District Court of Appeal, the effect of the Final Order is an issue of state law which this Court has no jurisdiction to consider. Third and last, petitioners raised the federal issues applicable to the Secretary in federal and state proceedings at the same time, and in both cases were seeking the same remedies: a binding adjudication that the Final Order was enforceable and forever fixed. Yet the petitioners failed to follow the procedures specified by this Court for preserving federal claims for presentation to a federal forum. Insofar as the present case applies to this respondent, the United States District Court should have abstained from passing upon these issues altogether.

A. The Effect Of The Final Order Was Determined By The District Court Of Appeal of Florida.

Petitioners' statement that they sued the Secretary "solely" to ensure the enforceability of the Final Order of the Administration Commission betrays a remarkable indifference to the rules of preclusion that limit judicial power. Since the enforcement of the Final Order is petitioners' sole rationale for keeping the Secretary a party to this case, this Court should reject it. The judgment of the District Court of Appeal of Florida was allowed to become final, so this Court is barred both by Act of Congress and its own precedent from revisiting the judgment.

Under the Full Faith and Credit Act, judgments such as the one rendered by the District Court of Appeal have "the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they were taken." 28 U.S.C. § 1738. This Court has applied the Act to preclude the relitigation of matters determined earlier in state judicial proceedings between the same parties. *See Matsushita Electrical Industrial Co., Ltd. v. Epstein*, 516 U.S. 367, 373 (1996); *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 379-80 (1985); *Allen v. McCurry*, 449 U.S. 90, 95-96 (1980). Like the present case, *Allen* arose under the Civil Rights Act of 1871. *See* 42 U.S.C. § 1983. Likewise in *Allen*, this Court ruled that after a state judicial proceeding had become final, the respondent in that proceeding was not allowed to use the Civil Rights Act as a contrivance to relitigate the same issues. 449 U.S. at 95-96. Petitioners are foreclosed from doing so here also, for a *per curiam* affirmance by the District Court of Appeal of Florida has *res judicata* effect. *Florida Farm Bureau Mutual Insurance*

Co. v. Florida Fruit and Vegetable Association, 436 So. 2d 1052 (Fla. Dist. Ct. App. 1983); *McDaniel v. Musgrove*, 427 So. 2d 1091 (Fla. Dist. Ct. App. 1983). As it did in *Allen*, the Court in this case should reject petitioners' misuse of the Civil Rights Act to circumvent the doctrine of *res judicata* and other rules of preclusion based on state law.

B. The Effect Of The Final Order Is An Issue Of State Law Of Which This Court Has No Jurisdiction.

In such cases as *Allen* and *Marrese* the issues the parties were barred from revisiting arose under federal law, even though the federal issues had been disposed of in antecedent state judicial proceedings. Petitioners here cannot even say that much. Here the effect of the Final Order by the Administration Commission is an issue of state law. Needless to say, this Court has no jurisdiction to determine issues of state law. *See Republican National Committee v. Burton*, 455 U.S. 1301, 1302 (1982) (Rehnquist, J.); *Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945); *Fox Film Corp. v. Muller*, 296 U.S. 207, 210-11 (1935). Once more, the enforceability of the Final Order is petitioners' sole rationale for holding the Secretary hostage to this proceeding. Petition at 8 n.4. Even if it did not violate the Full Faith and Credit Act to revisit that issue, this Court still would have no jurisdiction to consider it.

C. The District Court Should Have Abstained From Consideration Of This Case With Respect To This Respondent.

Federal judicial power is not allowed to interfere with pending state judicial or quasi-judicial proceedings if abstaining from the exercise of federal jurisdiction would obviate "the necessity of a decision on a constitutional question." *Burford v. Sun Oil Co.*, 319 U.S. 315, 333 n.29 (1943); *Railroad Commission v. Pullman Co.*, 312 U.S. 496, 501 (1941). Given the outcome of the state proceedings here, this case underscores the importance of the abstention doctrine. Insofar as this case applied to the Secretary, the District Court should have abstained here to prevent "needless friction with state policies" administered by the Department. *Railroad Commission v. Pullman Co.*, *supra*, 312 U.S. at 500. Abstention would have been proper in this case because "interference with a state judicial proceeding prevents the State not only from effectuating its substantive policies, but also from . . . providing a forum competent to vindicate any constitutional objections interposed against those policies." *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975). The doctrine encompasses any judicial or quasi-judicial state proceedings in which federal constitutional questions may be reviewed.[2] *See Ohio Civil Rights*

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2. In the proceeding before the Department the petitioners raised constitutional issues as well. Appendix at 20. Although the Department has no authority to determine constitutional issues, the District Court of Appeal and Supreme Court of Florida have jurisdiction to consider them at any later stage of the proceeding. *Key Haven Associated Enterprises, Inc. v. Board of Trustees*, 427 So. 2d 153, 156-58 (Fla. 1982); *Graham v. Estuary Properties, Inc.*, 399 So. 2d 1374, 1379-80 (Fla.), *cert. denied sub nom. Taylor v.*

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Commission v. Dayton Christian Schools, Inc., 477 U.S. 619, 628 (1986); *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423, 437 (1982); *Younger v. Harris*, 401 U.S. 37, 44 (1971). As this Court expressed it in *Younger*, government "will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." 401 U.S. at 44. Land use planning is no exception. The doctrine applies to state agencies acting in a quasi-judicial capacity as the Department was here. Indeed, the seminal *Burford* and *Pullman Co.* cases themselves arose from quasi-judicial administrative proceedings.

This is not a case in which the quasi-legislative functions of the Department are called into question. *See New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350, 365 (1989). Nor did the petitioners invoke the procedures approved by this Court to limit state judicial proceedings to state law issues by splitting off the federal constitutional questions for separate determination in the District Court. *See Hicks v. Miranda*, 422 U.S. 332, 336 (1975); *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 421-22 (1964). Petitioners' multiplication of the proceedings was improper, and this Court should not condone it.

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Graham, 454 U.S. 1083 (1981); *Long v. Department of Administration*, 428 So. 2d 688, 692-93 (Fla. Dist. Ct. App. 1983); *Rice v. Department of Health & Rehabilitative Services*, 386 So. 2d 844, 848 (Fla. Dist. Ct. App. 1980). The state proceedings here were more than adequate to redress any alleged constitutional violations.

II. THE JUDGMENT OF THE COURT OF APPEALS IS NOT INCONSISTENT WITH ANY DECISION OF THIS COURT.

Even if the Court had jurisdiction, the petitioners' arguments that the Court should give this case plenary consideration are untenable. Petitioners' argument rests on supposed inconsistencies between the judgment of the Court of Appeals and a recent decision by this Court. *See City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999). Yet nothing in *Del Monte Dunes* altered the elements of a compensable taking.

In *Del Monte Dunes* this Court affirmed a judgment for takings damages entered on a jury verdict. 526 U.S. at 723. There the Court narrowed the effect of its holding by its refusal to draw "a precise demarcation of the respective provinces of judge and jury in determining whether a zoning decision substantially advances legitimate governmental interests." *Id.* at 722. Furthermore, this Court based its holding upon the application of the Seventh Amendment to damage actions for inverse condemnation under the Civil Rights Act of 1871. *Id.* at 721-22. Petitioners now cite *Del Monte Dunes* as authority for the notion that the District Court should have allowed the present case to get to the jury. The pivotal difference is that the developer in *Del Monte Dunes* had sufficient evidence to give the jury.[3]

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3. This is not the only difference. Nineteen different site plans were submitted in *Del Monte Dunes*, and five denials occurred. 526 U.S. at 698. A conditional permit was granted in *Del Monte Dunes*, but was not extended. *Id.* at 696-97. Continued development in *Del Monte Dunes* was hampered at the time of final denial by a sewer moratorium. *Id.* at 697. In the present case petitioners (Cont'd)

The cases have no factual similarities. The proposed development in *Del Monte Dunes* was below the allotted intensity of use for the planning designation of the land. 526 U.S. at 694-96. Petitioners' primary contention here is that a taking inhered in the redesignation of the land from Urban Mixed Use to Community Mixed Use, which allowed up to 650,000 square feet of commercial development. Petition at 5-6; *id.*, Appendix B at 4a. It is this redesignation that petitioners are seeking to portray as a taking in the present case.

The jury in *Del Monte Dunes* was instructed to find for the developer if the developer was denied all economically viable use of land, or if the rejection of the development application by the local government bore no logical relationship to its proffered justification or was unsupported by a legitimate public purpose. 526 U.S. at 719-21. The owner is not denied all beneficial use of his land until the local government prohibits him from doing anything with it. *Id.* at 700. In any event, a takings case under the Civil Rights Act may only be sent to the jury if the owner offers

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submitted only two applications. Petition at 4-7. Here even after the final denial of petitioners' application the land use designation allowed for development up to 650,000 square feet. Petition at 6; *id.* at 8. Another difference lies in the unconditional character of the denial of the development application in *Del Monte Dunes*. The developer there was not allowed to pursue the development of its property after the final denial of its development application because the local government did not state the conditions on which it would be reconsidered. 526 U.S. at 697-98. The only conditions confronting petitioners in the present case stemmed from the ceiling on square footage due to the Community Mixed Use designation. A mere planning designation is not a taking, and nothing in *Del Monte Dunes* suggests otherwise.

evidence to show that damage remedies were unavailable elsewhere. *Id.* at 721. Petitioners had no such evidence to present in this case. Likewise, petitioners had no evidence tending to show that the denial of its application was arbitrary or unrelated to a legitimate public purpose. Petition, Appendix B at 9a. The County based its action *inter alia* on the need to protect the compatibility of adjacent uses. Compatibility is well within the universe of variables a local government may consider when it acts upon a development application. Petition, Appendix B at 4a; *id.* at 9a-10a. Here the petitioners had no evidence tending to discredit this rationale as either arbitrary or unrelated to a legitimate public purpose.

CONCLUSION

With respect to this Respondent, the Petition for Writ of Certiorari should be dismissed for lack of jurisdiction. In the alternative, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX — FINAL ORDER FINDING PLAN AMENDMENT IN COMPLIANCE WITH CHAPTER 163, PART II, FLORIDA STATUTES DATED JANUARY 12, 1999

[Omitted here but submitted separately in Lodging Appendix]